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OCT 04 2007

OFFICE OF PETITIONS

In re Application of :  
Yun-Nam Jang :  
Application No. 10/749,495 : DECISION ON PETITION  
Filed: December 31, 2003 :  
Attorney Docket No. 51876P577 :

This is a decision on the petition, filed January 30, 2007, which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is DISMISSED.

Any request for reconsideration of this decision should be filed within TWO (2) MONTHS from the mail date of this decision and include a cover letter entitled "Renewed Petition Under 37 CFR 1.8(b)." No extensions of time are available under 37 CFR 1.136(a). Note 37 CFR 1.181(f).

This application was held abandoned for failure to timely respond to the Office action of January 11, 2006, which set a three (3) month shortened statutory period for reply. Accordingly, a reply was due on or before April 11, 2006 or on or before July 11, 2006 with the appropriate extension of time fee. A Notice of Abandonment was mailed on January 12, 2007.

Petitioner states that a timely reply was mailed via certificate of mailing on April 10, 2006. Petitioner has submitted a copy of the previously mailed correspondence, which bears a certificate of mailing dated April 10, 2006, which would have rendered the reply timely if received.

The file record does not include the originally submitted papers. Failure to receive correspondence which includes a certificate of mailing or certificate of facsimile transmission is addressed in 37 CFR 1.8(b), reproduced below:

In the event that correspondence is considered timely filed by being mailed or transmitted in

accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition fails to satisfy item (3) above. In this regard, the statement under 37 CFR 1.8(b)(3) by Jean Svoboda, the person signing the certificate of mailing shown on the copy of the amendment, attests that "I deposited the attached Form PTOL-85 under Certificate of Mailing dated April 10, 2006 with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop Amendment address \* \* \* [emphasis supplied]. The statement is unacceptable since it references the mailing of a Form PTOL-85, rather than the amendment for this application. Therefore, the statement is not evidence of the timely mailing of the reply on April 10, 2006 to the outstanding Office action of January 11, 2006. Consequently, the holding of abandonment will not be withdrawn at this time.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:            Mail Stop PETITION  
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By hand:           U. S. Patent and Trademark Office  
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                  Randolph Building  
                  401 Dulany Street  
                  Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Correspondence regarding this decision may also be filed through the electronic filing system of the USPTO.

To expedite consideration, petitioner may wish to contact the undersigned regarding the filing of the renewed petition under 37 CFR 1.8(b).

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.

  
Frances Hicks  
Petitions Examiner  
Office of Petitions